

## **REMARKS**

### **A. BACKGROUND**

The present Amendment is in response to the Office Action mailed June 12, 2009. Claims 1, 4-8, 13, and 21-33 were pending and rejected in view of cited art.<sup>1</sup> Claims 1, 21, 24-25, 27-28, and 32 are amended. Claims 1, 4-8, 13, and 21-33 are now pending in view of the above amendments.<sup>2</sup>

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

### **B. PRIOR ART REJECTIONS**

#### **I. REJECTION UNDER 35 U.S.C. § 103**

The Office Action rejected claims 1, 4-8, 21, 22, 24, 25, and 33 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,960,410 (*Pinchuk*) in view of U.S. Publication No. 2002/0072730 (*McGill*). Claims 13, 23, 26, 27, 30, and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pinchuk* and *McGill* as applied to claims 4, 21, and 24, and further in view of U.S. Patent No. 5,951,494 (*Wang*). Claims 28 and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pinchuk*, *McGill*, and *Wang* as applied to claim 27 and further in view of U.S. Publication No. 2003/0050600 (*Ressemann*). Claim 31 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pinchuk* and *McGill* as applied to claim 1

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

and further in view of U.S. Patent No. 6,596,217 (*Davis-Lemessy*). Applicant respectfully traverses the Examiner’s rejection for obviousness on the grounds that the references – either individually or in combination – fail to teach or suggest each and every element of the rejected claims.

Independent claim 1 is amended herein to recite, in part, “kink protection at least partially overlapping and being connected to the proximal and distal portions of the pipe to prevent substantial longitudinal separation between the proximal and distal portions”; independent claim 21 is amended herein to recite, in part, “a pipe having proximal and distal portions disposed end to end without overlapping”; and independent claim 24 is amended herein to recite, in part, “a first proximal pipe and a second distal pipe disposed end to end with the distal end of the proximal pipe abutting the proximal end of the distal pipe.” By contrast, neither *Pinchuk* nor *McGill* teaches or suggests a method for delivering a closure element to seal an opening through tissue that incorporates each and every element as is presently claimed in independent claims 1, 21, and 24.

*Pinchuk* and *McGill* fail to teach or suggest each and every element of independent claim 1 as presently amended. As correctly identified in the Office Action, “*Pinchuk* fails to explicitly teach or disclose that a transitional portion is provided with kink protection at least partially overlapping the proximal and distal portions.” (Office Action, 3.) The Office Action then states that “*McGill* et al teach a kink protection portion (205) which extends over both a proximal and distal portion.” (*Id.*) However, *McGill* does not teach or suggest a “kink protection at least partially overlapping and being connected to the proximal and distal portions of the pipe to prevent substantial longitudinal separation between the proximal and distal portions,” as presently recited, in part, by independent claim 1. Rather, in direct contrast, *McGill* teaches a protector tube 205 which can be “bonded . . . to the proximal end of the distal hypotube 22,” but does not teach that the protector tube 205 is connected to the proximal hypotube 104, thereby facilitating longitudinal expansion and contraction between a “collapsed mode,” as shown, for example, in Figure 16, and an “expanded mode,” as shown, for example, in Figure 17. (¶¶ 129-130.) Consequently, Applicant respectfully submits that *McGill* neither teaches nor suggests “kink protection at least partially overlapping and being connected to the proximal and distal

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<sup>2</sup> Support for the claim amendments and/or new claim(s) can be found throughout the specification and/or drawings as originally filed.

portions of the pipe to prevent substantial longitudinal separation between the proximal and distal portions," as recited, in part, by independent claim 1.

*Pinchuk* also fails to teach or suggest "a pipe having proximal and distal portions disposed end to end without overlapping," as recited, in part, by independent claim 21. The Office Action asserts that "*Pinchuk* further discloses that the guiding wire lumen has coupled proximal (60) and distal (64) portions." (Office Action, 3.) However, Applicant has not found any portion of *Pinchuk* that teaches or suggests "a pipe having proximal and distal portions disposed end to end without overlapping." To the contrary, *Pinchuk* teaches that the "sheath 64 covers and is bonded to the reduced diameter portion of the tube 60." (Col. 3, ll. 45-46)(emphasis added). Applicant respectfully submits that the sheath 64, which covers and is bonded to a portion of the tube 60, is not the same as "a pipe having proximal and distal portions disposed end to end without overlapping," as recited, in part, by independent claim 21. Furthermore, modifying *Pinchuk* to incorporate "a pipe having proximal and distal portions disposed end to end without overlapping," would change the very principle of operation of *Pinchuk*.<sup>3</sup>

*Pinchuk* further fails to teach or suggest "a first proximal pipe and a second distal pipe disposed end to end with the distal end of the proximal pipe abutting the proximal end of the distal pipe," as recited, in part, by independent claim 24. As mentioned above, *Pinchuk* teaches a "sheath 64 [that] covers and is bonded to the reduced diameter portion of the tube 60." (Col. 3, ll. 45-46)(emphasis added). Applicant respectfully submits that the sheath 64, which covers and is bonded to a portion of the tube 60, is not the same as "a first proximal pipe and a second distal pipe disposed end to end with the distal end of the proximal pipe abutting the proximal end of the distal pipe," as recited, in part, by independent claim 24. Furthermore, modifying *Pinchuk* to incorporate "a first proximal pipe and a second distal pipe disposed end to end with the distal end of the proximal pipe abutting the proximal end of the distal pipe," would change the very principle of operation of *Pinchuk*.<sup>4</sup>

With respect to the remaining rejections under § 103, Applicant has not found any teaching or suggestion of the remaining cited references that would remedy the deficiencies of *Pinchuk* and *McGill* with respect to independent claims 1, 21, and 24. Accordingly, the pending dependent claims are allowable for at least the same reasons stated above.

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<sup>3</sup> See M.P.E.P. § 2143.02(VI).

<sup>4</sup> See *id.*

**C. CONCLUSION**

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 12th day of October, 2009.

Respectfully submitted,

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